

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 111 OF 2021

BNY Mellon International Operations
(India) Pvt. Ltd.

...Petitioner

Versus

Vrushali Dhumal

...Respondent

* * *

- Mr. Dharmesh Jain i/by Mr. Anil Agarwal, for the Petitioner.
- None for the Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 19TH OCTOBER, 2022.

P. C. :

1. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner is seeking appointment of a sole Arbitrator to adjudicate upon the disputes between the parties.

2. In the present case, the petitioner and the Respondent entered into a services agreement dated 22nd August, 2016, whereby the respondent was to provide certain services to the petitioner. The said agreement contained an Arbitration clause. Subsequently, on 18th April, 2017, the parties entered into a further agreement whereby the Arbitration clause i.e. clause 17(iii) was amended. The amended Arbitration clause read as follows :

*Clause 17 (iii) of each Agreement shall be amended as
set out below :*

“Any dispute arising out of or in connection with this

contract, including any question regarding its existence, validity or termination, shall be referred to an finally resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as amended (“Arbitration Act”). The number of arbitrators shall be one, to be jointly appointed by the Parties, failing which an arbitrator will be appointed in accordance with the Arbitration Act. The seat, or legal place, of arbitration shall be Mumbai. The language to be used in the arbitration shall be English.”

3. It appears that certain disputes arose between the parties and the petitioner claims that it is entitled to refund of security deposit. In this backdrop, by letter dated 04th May, 2021, the petitioner invoked the above quoted Arbitration clause and proposed the appointment of Mr. Viraj Jagdish Parikh, Advocate, as the sole Arbitrator in terms of the Arbitration clause. In response thereto, the proprietary concern of the respondent sent an E-mail on 11th May, 2021, stating that claims made on behalf of the petitioner were not based on complete information and that such claims were not acceptable to the respondent.

4. In this backdrop, the petitioner was constrained to file the present petition. A private notice was served on the respondent and an affidavit along proof of service was filed. This Court also issued notice by order dated 25th October, 2021. The record shows that the

said notice was duly served. Despite service of notice, the respondent has chosen not to appear before this Court.

5. In these circumstances, this Court heard the learned Counsel for the petitioner. He relied upon the above quoted Arbitration clause and submitted that the petitioner invoked the Arbitration clause as per the letter dated 04th May, 2021 and in response, the respondent has merely raised a dispute about the claims of the petitioner. But there is no response as against the name of the proposed Arbitrator suggested on behalf of the petitioner by letter dated 04th May, 2021.

6. This Court has perused the above quoted Arbitration clause. It stipulates appointment of a sole Arbitrator jointly by the parties and the seat of Arbitration is specified as Mumbai. It is also clear from the letter dated 04th May, 2021, sent by the petitioner to the Respondent that name of specific Arbitrator was proposed on behalf of the Petitioner. He is said to be an Advocate having sufficient years of practice and experience so as to be able to adjudicate upon the disputes between the parties.

7. This Court is of the opinion that the name of the Arbitrator proposed on behalf of the petitioner is in terms of the above quoted Arbitration clause and since there are indeed disputes between the parties, which is evident from the e-mail dated 11th May,

2021, addressed by the Respondent to the Petitioner, as also in the backdrop of the fact that the Respondent has chosen not to appear before this Court despite service of notice, it would be appropriate to appoint the sole Arbitrator as proposed by the petitioner.

8. Accordingly, Mr. Viraj Jagdish Parikh, Advocate is appointed as a sole Arbitrator. The contact details of the proposed Arbitrator are as follows :

Mr. Viraj Jagdish Parikh, Advocate

Off: 1-D, Lentin Chambers, Dalal Street, Fort Mumbai - 400001.

9. The learned Arbitrator shall communicate his consent and Disclosure Statement as per Section 11(8) r/w 12(1) of the aforesaid Act to the Registrar Judicial within three weeks. The petitioner shall communicate the order passed today, at the earliest to the learned Arbitrator. The fees of the Arbitrator shall be as per the Schedule IV to the aforesaid Act.

10. The parties shall appear before the learned Arbitrator on 21st November, 2022, at 04.00 p.m. Since the Respondent has not appeared before this Court, the Arbitrator shall issue notice to the Respondent as regards the said proceedings.

11. The petition stands disposed of.

(MANISH PITALE, J.)